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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

WEDNESDAY, THE 15TH DAY OF OCTOBER 2025 / 23RD ASWINA, 1947

CRL.A NO. 1869 OF 2008

AGAINST THE ORDER/JUDGMENT DATED 14.08.2008 IN
Cr1.L.P. NO.1106 OF 2008 OF HIGH COURT OF KERALA ARISING OUT
OF THE JUDGMENT DATED 25.09.2007 IN CC NO.96 OF 2006 OF
JUDICIAL MAGISTRATE OF FIRST CLASS, KODUNGALLUR.

APPELLANT/COMPLAINANT:

SHAILAPPAN, AGED 49 YEARS,
S/O. MULLANGATHU KOCHURAMAN, METHALA VILLAGE,
KODUNGALLUR TALUK, WORKING AS, MANAGING PARTNER OF
POORNIMA FINANCE, LOKAMALESWARAM VILLAGE,
DESOM, KODUNGALLUR TALUK.

BY ADVS.SRI.V.M.KRISHNAKUMAR
SHRI.ABRAHAM J. KANIYAMPADY
SHRI.SANGEETH MOHAN
SMT.V.K.SANJANA KRISHNAN

RESPONDENTS/ACCUSED & STATE:

- 1 SABITHA, W/O. EYIDATH SIYAVUDDEEN,
ERiyAD VILLAGE, KODUNGALLUR TALUK, ERIYAD P.O.
- 2 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV SHRI.RANJAN SURESH
R2 BY SERNIOR PUBLIC PROSECUTOR SRI.ALEX M.THOMBRA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
14.10.2025, THE COURT ON 15-10-2025 DELIVERED THE FOLLOWING:



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JOHNSON JOHN, J.

Cr1.Appeal No.1869 of 2008

Dated this the 15th day of October, 2025.

J U D G M E N T

This appeal by the complainant is against the acquittal of the accused under Section 138 of the Negotiable Instruments Act, 1881 ('N.I Act' for short).

2. As per the complaint towards discharge of a debt, the accused issued a cheque dated 19.12.2005 for Rs.1,00,000/- to the complainant. When the complainant presented the cheque for collection, the same was dishonoured due to insufficiency of funds in the account of the accused and in spite of issuance of statutory notice, the accused failed to pay the cheque amount to the complainant.

3. Before the trial court, from the side of



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the complainant, PW1 examined and Exhibits P1 to P7 were marked and from the side of the accused, DW1 examined and Exts.D1 and D2 were marked.

4. After considering the oral and documentary evidence on record and hearing both sides, the trial court found that the complainant has not succeeded in proving the offence under Section 138 of the N.I Act against the accused and hence, the accused was acquitted.

5. Heard Sri.Abraham.J.Kaniyampady, the learned counsel representing the appellant on record, Sri.Ranjan Suresh, the learned State Brief representing the first respondent/accused and Sri.Alex M.Thombra, the learned Senior Public Prosecutor for the second respondent.

6. The learned counsel for the appellant argued that the accused has not disputed the signature in Exhibit P1 cheque and the findings in



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the impugned judgment that the accused has succeeded in rebutting the statutory presumptions in favour of the complainant is not legally sustainable.

7. The learned State Brief representing the accused/first respondent argued that the complainant has not disclosed the alleged date of execution and issuance of the cheque in the complaint or in the chief affidavit of PW1 and that the evidence of PW1 in cross examination regarding the alleged transaction does not tally with the averments in the complaint. It is also argued that no document is produced to show that the person, who signed the complaint as Managing Partner of the complainant Poornima Finance has authority to represent the complainant.

8. A perusal of Ext.P1 cheque shows that the payee is M/s.Poornima Finance. Even though PW1 claimed that he is the Managing Partner, no document



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is produced to prove the same. In cross examination, PW1 stated that his wife and daughter are the other partners of the firm and that he will produce the documents in this connection. But no such document is seen produced in this case. PW1 further admitted that he is also conducting Poornima Jewellery. According to PW1, the amount was borrowed as per promissory note on 03-10-2005 by the accused along with her father and brother. PW1 would say that the accused executed and issued the cheque on 19-12-2005 and that he returned the promissory note to the accused at that time. But immediately PW1 corrected himself by saying that the promissory note was not returned to the accused.

9. PW1 further stated in cross examination that the accused purchased gold ornaments from the Jewellery and that Ext.D1 dated 15-04-2005 is the estimate in that connection. He also admitted that



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Ext.D2 account slip regarding the purchase of gold ornaments by the accused is in his handwriting.

10. DW1 is the father of the accused and he deposed that on 15-04-2005, he purchased gold ornaments from the complainant's Jewellery for Rs.1,56,208/-. According to DW1, he paid Rs.20,000/- and for the balance amount he handed over a blank cheque of the accused. DW1 stated that the marriage of the accused was on 17-04-2005 and that subsequently he paid Rs.40,000/- and old gold ornaments worth Rs.34,000/-. In cross examination, DW1 stated that it is not known to him whether the complainant is conducting finance business. But according to DW1, he has not borrowed any amount from the complainant.

11. In *M.S.Narayana Menon v. State of Kerala [(2006) 6 SCC 39]*, the Hon'ble Supreme Court considered the nature of the standard of proof for



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rebutting the presumption under Section 139 of the N.I Act and it was held that if some material is brought on record consistent with the innocence of the accused, which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal.

12. *In Basalingappa v. Mudibasappa ((2019) 5 SCC 418)*, the Hon'ble Supreme Court summarised the principles of law governing the presumptions under Sections 118 and 139 of the N.I Act in the following manner:

- “(i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.
- (ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.
- (iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to



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raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden. ”

13. It is well settled that the standard of proof which is required from the accused to rebut the statutory presumption under Sections 118 and 139 of the N.I Act is preponderance of probabilities and that the accused is not required to prove his case beyond reasonable doubt. The standard of proof, in order to rebut the statutory presumption, can be inferred from the materials on record and circumstantial evidence.

14. In ***ANSS Rajashekar v. Augustus Jeba***



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Ananth [2019 (2) KHC 155= 2019 (1) KLD 492], it was held that when evidence elicited from complainant during cross examination creates serious doubt about the existence of debt and about the transaction and the complainant fails to establish the source of funds, the presumption under Section 139 is rebutted and the defence case stands probalised.

15. In **APS Forex Services Pvt. Ltd. v. Shakti International Fashion Linkers and Others [2020 (1) KHC 957 = 2020 (1) KLD 313]**, it was held that whenever the accused questioned the financial capacity of the complainant in support of his probable defence despite the presumption under Section 139 onus shifts again on the complainant to prove his financial capacity.



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16. When considering the evidence in this case on the basis of the above legal principles, it is apparent that there existed a contradiction in the complaint moved by the appellant as against his cross examination relatable to the time of execution and issuance of the cheque, especially in view of the fact that the complainant has not disclosed the date of execution and issuance of the cheque in the complaint or in his chief affidavit.

17. The learned counsel for the appellant relied on the decision of the Hon'ble Supreme Court in *Sanjabij Tari v. Kishore S.Borcar* [2025(6) KHC 250(SC)] and argued that the failure of the accused to reply to the statutory notice under Section 138 of the N.I Act leads to an inference that there is merit in the version of



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the complainant and that the burden is on the accused to prove that there was no existing debt or liability as held by the Hon'ble Supreme Court in *M.M.T.C Ltd. v. Medchil Chemicals And Pharma (P) Ltd. [2002 KHC 241]*.

18. The decision of the Hon'ble Supreme Court in *Sanjabij Tari's case (Supra)* would clearly shows that ultimately it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence. In the present case, the trial court arrived at a finding that the evidence of PW1 in cross examination and Exts.D1 and D2 is sufficient to establish a



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probable defence to rebut the statutory presumptions in favour of the complainant. As noticed earlier, the evidence of PW1 in cross examination clearly shows that he is also conducting a jewellery and that DW1 has purchased gold ornaments from his jewellery on 15-04-2005. In Ext.D1 estimate, the name of DW1 Shamsu Mathilakam is seen written and therefore, I find that the accused has been able to cast a shadow of doubt on the case presented by the appellant and I find no reason to disagree with the finding of the trial court that the complainant has not succeeded in proving the execution and issuance of Ext.P1 cheque by the accused in discharge of a legally enforceable debt. On a careful re-appreciation of the entire evidence, I find no reason to interfere with the finding in the impugned



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judgment that the complainant has not succeeded in proving the offence under Section 138 of the N.I Act against the accused. Therefore, I find that this appeal is liable to be dismissed.

In the result, this appeal is dismissed.

Sd/- JOHNSON JOHN, JUDGE.

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